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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1965.

No. 1178.

FRED SAIGH and ELIZABETH SAIGH, by Relation to ANHEUSER-BUSCH, INC., a Corporation,
Petitioners,

vs.

AUGUST A. BUSCH, JR.,
Respondent.

OPPOSITION BRIEF

Of Respondent, August A. Busch, Jr.

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NATURE OF THE CASE.

The plaintiffs (petitioners here) filed their suit in the Circuit Court of the City of St. Louis on May 7, 1963, which was at least 9 years and 4 months after the purchase of their stock of the nominal defendant Anheuser-Busch, Inc., on or about January 1, 1954. The suit was filed in two counts referred to as Count I and Count II. Count I was tried on its merits and submitted to the Court for final adjudication on October 8, 1963. Count I is not involved in this Petition for Writ of Certiorari, having been severed for purposes of trial and appeal (Tr. 36-36a).

The stipulation of facts upon which Count I was tried was thereafter by agreement of counsel made a part of

the record in Count II. (Supplemental Transcript of Record filed by Petitioners with Clerk.) Portions of said stipulation pertinent hereto are appended herein as Appendix 1. Exhibit G to said stipulation is included as Appendix 2. Exhibit H thereto is included as Appendix 3.

Petitioners, in their application for extension of time within which to file their petition (p. 3), suggest that the Court take judicial notice of the present value of their stock. They do so in this manner:

> "... if the Court will take notice of published bid and asked quotations on this stock, has a market value in excess of $3,000,000.00."

In view of the above statement, which is substantially correct, we believe the detail of the figures involved may be of interest. The 31,600 shares owned by the petitioners on January 1, 1954 (Paragraph 1, Plaintiffs' Second Amended Petition, Petitioners' Exhibit A, p. 17), have been subject to a stock dividend and a stock split as follows:

April 28, 1965.....2 for 1 Stock Split
October 27, 1965.....10% Stock Dividend

Hence, the said 31,600 shares are now the equivalent of 69,520 shares.

Exhibit H to the stipulation made a part of the Count II record as aforesaid shows the low and high for the stock in 1953 to have been 23½ and 34, respectively. Hence, petitioners' initial investment for the said 31,600 shares would have been between a minimum of $742,600.00 and a maximum of $1,074,000.00. The same shares (now 69,520), based on the March 10, 1966 published bid price (46⅝), would have a value of $3,241,370.00.

Count II, which is the subject matter of the Petition for Writ of Certiorari, alleged that the compensation and perquisites received by the respondent August A. Busch, Jr., the President and Chairman of the Board of the

nominal defendant Anheuser-Busch, Inc., and its chief executive officer, were "far in excess of the reasonable value of defendant's services as President of the nominal defendant" (Paragraph 11 of Plaintiffs' Second Amended Petition, Exhibit A, p. 19 of Petition herein [hereafter referred to as Exhibit A]; Tr. 27).

In addition to the foregoing charge, the plaintiffs alleged that the members of the Board of Directors of said Anheuser-Busch, Inc., are selected and nominated by the defendant and, in respect to said compensation and perquisites of the defendant (Busch), are influenced and controlled by him (Paragraph 10 of Plaintiffs' Second Amended Petition, Exhibit A, p. 18; Tr. 26). These allegations were denied by the defendant corporation (Tr. 34).

The answer of defendant August A. Busch, Jr., alleged in paragraph 13 (Tr. 46) that the action was not brought in good faith for the benefit of the corporation or its shareholders, but rather in a malicious effort to discredit defendant Busch, the corporation, and the members of the board of directors (Tr. 46).

Within a month after filing their suit, plaintiffs filed a motion to inspect the income tax returns of defendant August A. Busch, Jr., for the years 1955 through 1962, as well as any correspondence with the Internal Revenue Service respecting "claimed amounts of income not included in any such return, or respecting disputed claims for business expenses" (Tr. 15).

On July 12, 1963, the trial court sustained the motion; and, on July 17, 1963, modified its order so as to require defendant Busch to "make available for examination by plaintiffs, their counsel and auditors, . . . such portions of the income tax returns of the defendant August A. Busch, Jr., for the calendar years 1954 to 1962, inclusive, as relate to: (1) wages, salaries, bonuses, commissions and expense account allowances or reimbursed expenses re-

ceived by him from any employer, (2) rental income and expenses in connection with the production thereof, (3) farm income and expenses, and (4) income from sources other than capital gains, dividends, interest, annuities, estates and trusts, and such portions of any correspondence between the Internal Revenue Service of the United States and said defendant, or anyone representing him, if any, respecting claimed amounts of any such items of income not included in any such return, or respecting disputed claims for business expenses . . ." (Tr. 22-23).

The records were accordingly made available to the plaintiffs and their counsel.

Thereafter the plaintiffs were permitted to make four amendments, on four different occasions, to their original petition (Exhibit A, p. 42). Defendant Busch refiled his said answer, containing the affirmative defenses aforementioned and filed a motion to dismiss plaintiffs' second amended petition as amended (Tr. 48, 56) on the ground that it failed to show that petitioners had submitted their grievances to the body of the stockholders or to give legally cognizable reasons for not doing so.

On December 18, 1963, said motion of defendant August A. Busch, Jr., to dismiss plaintiffs' second amended petition as amended was argued by respective counsel and submitted to the court (Tr. 57).

On January 20, 1964, the Court sustained said motion of defendant August A. Busch, Jr., to dismiss Count II of plaintiffs' second amended petition as amended and dismissed Count II with prejudice (Tr. 58).

Thereafter, on January 30, 1964, plaintiffs filed a motion for new trial as to Count II (Tr. 62). After it was duly considered and overruled, plaintiffs appealed to the St. Louis Court of Appeals and that court affirmed the decision of the trial court on September 21, 1965. Petitioners' motion for rehearing or to transfer cause to the

Supreme Court of Missouri was subsequently overruled. Petitioners then filed in the Supreme Court of Missouri their motion to transfer and suggestions in support thereof. Said motion to transfer was overruled by the Supreme Court of Missouri on December 13, 1965.

Petitioners have filed with the Clerk of this Court a certified copy of their brief in the St. Louis Court of Appeals and make reference thereto in their petition (pp. 7-8). Respondent has lodged with the Clerk a certified copy of each brief filed by respondent in the St. Louis Court of Appeals, but no reference is made to same herein.

On March 11, 1966, petitioners filed, and this Court sustained, their application for extension of time within which to file their petition for the Writ of Certiorari.

OPINION BELOW.

The opinion of the St. Louis Court of Appeals is reported at 396 S. W. 2d 9. A copy of the opinion is appended to the Petition for Writ of Certiorari found at pages 15 through 43 thereof marked as Exhibit A.

For the convenience of the court and in order to present this matter in sequence, we herewith quote a few of the pertinent statements contained in said opinion:

> "If a stockholder brings a derivative action in behalf of the corporation it is a settled principle of equity jurisprudence and, we add a requirement of Civil Rule 52.08 (b), that before a court will entertain such an action and inquire into wrongs complained of by the stockholder, the stockholder must show that he has no other avenue of recovery and this can be done only on a showing that he has exhausted all remedies and reasonable efforts within the corporation" (Exhibit A, p. 24; 396 S. W. 2d, l. c. 16).

* * * * * * *

"This is the predominant rule followed in all of our Missouri cases and in addition to the cases cited in the quotation taken from Punch v. Hipolite Co., supra, we also cite Ratermann Building & Contracting Co. v. Missouri Portland Cement Co., 347 Mo. 12, 145 S. W. 2d 422; Bailey v. State Farmers Mutual Casualty Co., Mo. App., 377 S. W. 2d 485, and Helm v. Talmadge, supra. For other cases within the Federal jurisdiction, wherein the rule was applied requiring stockholders in derivative actions to exhaust all reasonable efforts to remedy the grievance within the corporation before bringing the action, see Quirke v. St. Louis-San Francisco Railway Company, 277 F. 2d 705, and Heinz v. National Bank of Commerce in St. Louis, 237 F. 942.

"While the rule stated above requires the stockholder who brings the derivative action to allege and show, if he failed with the directors, that he has made an honest effort to obtain action by the stockholders as a body and if this is not done, where it could not be done or that it was not reasonable to require it and would therefore be a futile act, the complaining stockholder need not make these allegations in his petition if his petition alleges that the officers and directors of the corporation violated the trust committed to them by perpetrating and doing ultra vires, illegal or fraudulent acts, because such acts cannot be ratified even by a majority of the stockholders. In such a situation equity will entertain an action for relief by a dissenting minority stockholder without first resorting or appealing to the stockholders as a body" (Exhibit A, pp. 25-26; 396 S. W. 2d, l. c. 17).

* * * * * * * *

"The petition does not allege that the directors or officers performed or perpetrated ultra vires, illegal or fraudulent acts. If it was alleged that they had,

it would be unnecessary for plaintiffs to resort to the stockholders for their desired action, because, as we have pointed out, the majority of the stockholders could not ratify such acts. Also, plaintiffs' petition does not allege or show that a majority of the stockholders improperly participated in the setting of the remuneration and perquisites complained of or that they participated in any manner" (Exhibit A, p. 28; 396 S. W. 2d, l. c. 18-19).

* * * * * * *

"Failing to allege such acts or facts, it becomes incumbent upon the plaintiffs to seek redress of their complaint from the body of the stockholders. This they must do, we think, because they have failed to allege that the other stockholders have refused to call upon the directors and management to bring this action. It may be that a majority of the stockholders do not feel that the remuneration and perquisites received by defendant Busch are excessive. In that event, to permit plaintiffs to prosecute this action would be calling upon the court to exercise its judgment for that of the directors and stockholders on a purely managerial question. This, as we have pointed out, courts will refuse to do. This need to apply to the stockholders collectively is but a showing required under the equitable principle that the stockholder must exhaust all remedies and reasonable efforts within the corporation. It was out of this equitable principle that Civil Rule 52.08 (b) was adopted, which rule, in turn, came to us from Federal Rule 23 (b)" (Exhibit A, p. 29; 396 S. W. 2d, l. c. 19).

QUESTION PRESENTED.

Is the Federal Constitutional guarantee of due process violated by a decision of a state court which enforces a state statute and an identical rule of its highest court

requiring that, in a stockholder's derivative suit, a minority stockholder, before attacking an exercise of business judgment by corporate management, must show, in the absence of fraudulent, ultra vires, or illegal acts, that, having failed with the directors, the derivative suit plaintiff has made an honest effort to obtain the desired action from the stockholders as a body or, if this is not done, that there are legally cognizable reasons for his failure to make such effort?

REASONS FOR DENYING THE WRIT.

I.

The recent decision by this court in the case of Surowitz v. Hilton Hotels Corporation (1966), 34 Law Week 4196, in no way modifies the salutary requirements of the rule that absent fraudulent, ultra vires or illegal acts, intra corporate redress must be sought by a minority stockholder dissatisfied with an exercise of business judgment before instituting litigation attacking it.

The Surowitz opinion does not announce, as stated by the petitioners here, "the right of a minority shareholder to establish by discovery facts necessary to support the requirements of the rule in a shareholder's derivative action." (Petition, p. 9.) We cannot find any language in the Surowitz opinion that even faintly resembles such an enunciation.

As we understand the Surowitz decision, with which we have no quarrel whatsoever, it held in effect that the verification of the petitioner, supported as it was by two other affidavits based upon a prolonged and fruitful investigation, which had developed facts showing actual fraud and deception on the part of the respondents, was sufficient to entitle said petitioner to a trial on the merits. This Court, therefore, overruled the Court of Appeals

which had reached an opposite conclusion "despite the fact that the charges made against the defendants were viewed as very serious and grave charges of fraud and that 'many of the material allegations of the complaint are obviously true and cannot be refuted.' 342 F. 2d at 607" (34 L. W. 4196-4197).

The Surowitz case does not directly or indirectly touch the question involved here, to-wit, whether a dissident minority stockholder, on a purely managerial decision not involving charges of fraudulent, illegal or ultra vires acts, must submit his grievance to the body of the stockholders before calling upon the courts to substitute their judgment for that of the great majority of said stockholders.

II.

Petitioners' right to due process was not violated by judicial application of Rule 52.08 (b) of the Supreme Court of Missouri, which is identical to a Statute of Missouri, Section 507.070, requiring that, as a prerequisite to maintaining this derivative action, they must show that they have exhausted all means of intra corporate redress available to them. Petitioners failed and refused to present the issue of propriety of respondent's compensation to the body of the stockholders. The majority of said stockholders has rights at least equal to those of the petitioners under the due process clause.

Petitioners complain that their right to due process has been violated by the decision of the St. Louis Court of Appeals enforcing Rule 52.08 (b) of the Supreme Court of Missouri. Said Rule requires in part:

> ". . . The petition shall also set forth with particularity the efforts of the plaintiff to secure from the managing directors or trustees, and, if necessary, from the shareholders, such action as he desires, and

the reasons for his failure to obtain such action or the reasons for not making such effort."

Relying upon said rule and copious precedent, discussed more fully below, the St. Louis Court of Appeals held that, in the absence of fraudulent, ultra vires, or illegal acts, ". . . it is necessary that a minority stockholder in his petition allege facts which make it clear that he cannot obtain redress through regular corporate action and his failure to so allege is fatal if he does not show that he has called upon the corporation and the body of stockholders to redress the wrong he complains of in his petition and been refused or, as said, show facts which would excuse such efforts" (Exhibit A, p. 27; 396 S. W. 2d, l. c. 18).

Petitioners did, in their last amendment to their petition, assert irrelevant reasons for not seeking relief from the shareholders, i. e., (a) that the "action desired" was **not within the power of the shareholders** and (b) that petitioners could not secure the election of a new board of directors (Paragraph 12, Second Amended Petition, Exhibit A, pp. 19-21; 396 S. W. 2d, l. c. 14-15; Tr. 53-55).

Assigned "reason" (a) is in accordance with petitioners' contention from the outset that the majority of stockholders have no rights whatever to be informed or to be heard in this type of controversy. Assigned "reason" (b) begs the question entirely and sets up a strawman, to-wit, that petitioners, if they ever tried, would find it difficult, if not impossible, to elect a new board of directors. The issue here is whether a dissident stockholder, before filing a derivative action, absent fraudulent, illegal or ultra vires acts, must submit his grievance to the body of the stockholders whenever he contends that a board of directors has failed in its managerial responsibilities.

The court below thoroughly discussed the alleged "reasons" and subdivisions thereunder, forcefully demon-

strating the irrelevance of each (Exhibit A, pp. 33-40; 396 S. W. 2d, l. c. 21-24). Neither of the reasons thus assigned, nor any of the subdivisions, provides legally cognizable grounds for petitioners' failure to seek intra corporate redress and therefore could not operate to relieve petitioners of the requirement to obtain approval of the stockholders prior to attempting to maintain this action. See Quirke v. St. Louis-San Francisco Railway Co. (8th Cir., 1960), 277 F. 2d 705, cert. den. 363 U. S. 845.

The requirement of seeking intra corporate redress as a prerequisite to maintaining a suit of this nature is a reasonable exercise of the authority of a state to regulate the use of its adjudicating processes and to protect the rights of all other stockholders, for whom petitioners purport to speak. As such, the requirement cannot be held to violate the principle of due process.

In Cohen v. Beneficial Industrial Loan Corp. (1949), 337 U. S. 541, this Court considered a relatively similar issue, i. e., whether due process was violated by a state statute which provided that a derivative suit plaintiff could be required to post security for the corporation's expenses in defending the suit.

The opinion, delivered by Mr. Justice Jackson, discusses the history of derivative suits and holds that due process is not violated by state statutes which regulate their maintenance. The following words of the Court are of particular import herein:

> "**The very nature of the stockholder's derivative action makes it one in the regulation of which the legislature of a state has wide powers.** Whatever theory one may hold as to the nature of the corporate entity, it remains a wholly artificial creation whose internal relations between management and stockholders are dependent upon state law and may be subject to most complete and penetrating regulation,

either by public authority or by some form of stockholder action. Directors and managers, if not technically trustees, occupy positions of a fiduciary nature, and nothing in the Federal Constitution prohibits a state from imposing on them the strictest measure of responsibility, liability and accountability, either as a condition of assuming office or as a consequence of holding it.

"Likewise, a stockholder who brings suit on a cause of action derived from the corporation assumes a position, not technically as a trustee perhaps, but one of a fiduciary character. He sues, not for himself alone, but as representative of a class comprising all who are similarly situated. The interests of all in the redress of the wrongs are taken into his hands, dependent upon his diligence, wisdom and integrity. And while the stockholders have chosen the corporate director or manager, they have no such election as to a plaintiff who steps forward to represent them. He is a self-chosen representative and a volunteer champion. The Federal Constitution does not oblige the State to place its litigating and adjudicating processes at the disposal of such a representative, at least without imposing standards of responsibility, liability and accountability which it considers will protect the interests he elects himself to represent. It is not without significance that this Court has found it necessary long ago in the Equity Rules and now in the Federal Rules of Civil Procedure to impose procedural regulations of the class action not applicable to any other. **We conclude that the state has plenary power over this type of litigation" (337 U. S., l. c. 549-550).** (Emphasis added.)

* * * * * * *

"A state may set the terms on which it will permit litigations in its courts. No type of litigation is more susceptible of regulation than that of a fiduciary na-

ture. And it cannot seriously be said that a state makes such unreasonable use of its power as to violate the Constitution when it provides liability and security for payment of reasonable expenses if a litigation of this character is adjudged to be unsustainable" (337 U. S., l. c. 552). (Emphasis added.)

* * * * * * * *

"But we deal with power, not wisdom; and we think, notwithstanding this tendency, it is within the power of a state to close its courts to this type of litigation if the condition of reasonable security is not met" (337 U. S., l. c. 552).

* * * * * * * *

"**A plaintiff cannot avail himself of the New Jersey forum and at the same time escape the terms on which it is made available** . . ." (337 U. S., l. c. 554). (Emphasis added.)

Not only does Missouri Supreme Court Rule 52.08 (b) and its application in the opinion below fully comport with all requirements of due process, it is in complete accord with prior decisions of the Supreme Court of Missouri and this Court.

Indeed, the opinion of the St. Louis Court of Appeals was firmly grounded upon the rule of Hawes v. Oakland (1881), 104 U. S. 450, to which it referred and quoted from as follows:

"A landmark case frequently cited in our Missouri decisions concerning stockholders' derivative actions is that of Hawes v. Oakland, supra, wherein the court said at 104 U. S., l. c. 460-461:

'But, in addition to the existence of grievances which call for this kind of relief, it is equally important that **before** the shareholder is permitted in his own name to institute and conduct a litigation which usually belongs to the corporation,

> he should show to the satisfaction of the court that he has exhausted all the means within his reach to obtain, within the corporation itself, the redress of his grievances, or action in conformity to his wishes. He must make an earnest, not a simulated effort, with the managing body of the corporation, to induce remedial action on their part, and this must be made apparent to the court. If time permits or has permitted, he must show, if he fails with the directors, that he has made an honest effort to obtain action by the stockholders as a body, in the matter of which he complains. And he must show a case, if this is not done, where it could not be done, or it was not reasonable to require it.
>
> 'The efforts to induce such action as complainant desires on the part of the directors, and of the shareholders when that is necessary, and the cause of failure in these efforts, should be stated with particularity, * * *'

"This is the predominant rule followed in all of our Missouri cases . . ." (Exhibit A, pp. 24-25; 396 S. W. 2d, l. c. 17). (Emphasis added.)

The leading case in Missouri on the aspect of derivative suits with which we are here concerned is Caldwell v. Eubanks (1930), 326 Mo. 185, 30 S. W. 2d 976, 72 A. L. R. 621, wherein a demurrer to such an action was sustained because plaintiffs had failed to allege that they had sought from the other stockholders the action they desired. In affirming the action upon the demurrer, the Supreme Court of Missouri said:

> "In cases where a stockholder fails to obtain corporate action through the board of directors, the general rule is that he should seek such action by the stockholders as a body, unless the facts be such that

he could not do so, or it would be unreasonable or useless to require it" (30 S. W. 2d, l. c. 979).

* * * * * * * *

"Courts will not lend a listening ear to dissatisfied stockholders and permit them to maintain a suit for the benefit of the corporation unless they show that they have exhausted all remedies within the corporation or furnish some valid reason why they have not done so. No such showing is made in plaintiffs' petition" (30 S. W. 2d, l. c. 980).

The rule of Hawes v. Oakland, supra, and Caldwell v. Eubanks, supra, was written into the statutes of Missouri by the Sixty Second General Assembly of Missouri in 1943 (Laws of 1943, p. 353, Sect. 19) in what is now Section 507.070. The Supreme Court of Missouri later promulgated Rule 52.08 which is identical to that section. The rule and statute have continued to govern the institution of derivative suits, as witness the words of the St. Louis Court of Appeals in Schick v. Riemer (1954), 263 S. W. 2d 51, 54:

"**Before** filing such action, however, they must apply for relief to the directorate and to the stockholders, exhausting all remedies within the corporation. See Section 507.070, subd. 2, R. S. Mo. 1949, V. A. M. S." (Emphasis added.)

Petitioners rely upon three Missouri cases, Merrill v. Davis (1950), 359 Mo. 1191, 225 S. W. 2d 763; Leggett v. Missouri State Life Insurance Co. (1960), 342 S. W. 2d 833; and Santa Fe Hills Golf & Country Club v. Safehi Realty Company (1961), 349 S. W. 2d 27 (Petition, p. 10). However, none of these cases involved an interpretation of Rule 52.08 (b) on the point in question, and we can find no case which supports the position taken by petitioners. On the contrary, the portion of Merrill v. Davis, supra, quoted by petitioners reflects the court's continuing recognition of the rule:

> " 'The control of litigation and the decision to litigate or not is in the directors, and, **until they improperly fail or refuse to sue or defend in the corporate name,** the stockholders cannot do so, and then must sue in right of the corporation in equity making a case of wrongful refusal to sue.' " (Emphasis added.)

Manifestly, the opinion below is not, as petitioners claim, "in the face of" prior decisions of Missouri appellate courts; nor does it espouse "for the first time" any principles of law not heretofore firmly established by this Court and the Courts of Missouri. The opinion below is an expression of a time honored and consistently recognized rule based upon an equitable balance of interests between the derivative suit plaintiff and **all other stockholders** who, if informed and consulted, might fully agree—or disagree—with the action of which the derivative suit plaintiff complains.

If the rule were otherwise, a derivative suit plaintiff could, after inspecting corporate records and the income tax returns of all individuals whose salaries are questioned (Tr. 15), and after employing formal interrogatories and taking depositions, adopt one of two courses: (1) he could dismiss the action, express his regrets, pay a nominal amount of court costs and walk away, or (2) he could ask the court to substitute its judgment for that of the directors, while the great body of the stockholders were entirely ignored and kept on the sidelines. Moreover, during this entire period, the corporation's reputation, policies, and good will, which are of vital economic interest to every corporation, would be under a cloud and subject to whatever doubts the plaintiff could create in the public mind through his allegations.

The protections of due process should and do extend not only to the petitioners herein but to the body of the stockholders as well. For they, too, have a right to be

consulted and to be heard on matters of business judgment if, as petitioners have alleged, the directors have improperly abandoned their managerial responsibilities. As the owners of the corporation, the body of the stockholders has the right to approve or disapprove the compensation paid to respondent. This is a right which reposes in them and not in the courts, until and unless those who would speak for the stockholders can show that they come into court with the approval of the holders of the majority of the stock.

A derivative suit plaintiff may be, as stated by Mr. Justice Jackson, supra, 337 U. S., l. c. 549, "a self-chosen representative and a volunteer champion . . ." It is a matter of fundamental fairness that those whom he would represent should be informed as to the nature of the grievance, that they should be given an opportunity to state whether in their business judgment, there is any wrong to be redressed and, if so, whether they want to depend upon such volunteer's "diligence, wisdom and integrity . . .", 337 U. S., l. c. 549, in the selection of the remedy and the prosecution thereof. Of course, if as in the Surowitz case, charges of fraudulent, illegal, or ultra vires acts were made, there would be no necessity for seeking the judgment of the body of the stockholders.

Petitioners have not been limited, as they claim, to seeking "ratification of the very acts complained of . . ." (Petition, p. 11). They simply have been required to show that they actually represent the will of the body of the stockholders.

CONCLUSION.

It is therefore respectfully submitted that the writ of certiorari should not be granted for the reason that no rights secured to the petitioners by the Federal Constitution were violated by the judgment of the St. Louis Court of Appeals in this case.

Unquestionably, a contrary holding would deprive the great body of stockholders in every large corporation of any opportunity to be informed or to have a voice in management decisions whenever as much as one dissident stockholder seeks to overrule the chosen legal representatives of the corporation—its directors. Chaos is certain to result if the statutory duties and responsibilities of the directors are thus automatically transferred to a self-appointed champion whenever he chooses to ignore the majority of the stockholders and to litigate managerial decisions without its advice and consent. He can then challenge the salaries, the methods of advertising, the processing of products, the purchase of equipment and of new plant locations, the corporate financial structure, etc. In short, the volunteer representative would then have the exclusive privilege of making whatever allegations came to his mind.

In Missouri no bond to protect corporate losses is mandatory as in the Cohen case, supra, nor is even a "verification" of the charges required as in Federal Rule 23 (b). In light of these circumstances, the ruling of the St. Louis Court of Appeals is not only reasonable but a very necessary requirement.

Respectfully submitted,

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